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10 USC Sec. 2208

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-EXPCITE-

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART IV - SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 131 - PLANNING AND COORDINATION-HEAD-Sec. 2208. Working-capital funds

-STATUTE-

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to -

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of -

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the

activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$100,000:

(A) An unspecified minor military construction project under section 2805(c)(1) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000.

(4) In this subsection:

(A) The term "advance billing", with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term "customer" means a requisitioning component or agency.

(m) Capital Asset Sub accounts. - Amounts charged for depreciation of capital assets shall be credited to a separate capital asset sub account established within a working-capital fund.

(n) Separate Accounting, Reporting, and Auditing of Funds and Activities. - The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) Charges for Goods and Services Provided Through the Fund. -

(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c)(1) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) Procedures For Accumulation of Funds. - The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) Annual Reports and Budget. - The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each sub account of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset sub account of the fund that contains the following information:

(A) The opening balance of the sub account as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the sub account in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the sub account in the fiscal year in which the report is submitted.

(D) The estimated balance of the sub account at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the sub account in the immediately following fiscal year.

-SOURCE-

(Added Pub. L. 87-651, title II, Sec. 207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97-295, Sec. 1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98-94, title XII, Sec. 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title III, Sec. 305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100-26, Sec. 7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101-510, div. A, title VIII, Sec. 801, title XIII, Sec. 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102-172, title VIII, Sec. 8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102-484, div. A, title III, Sec. 374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103-160, div. A, title I, Sec.

158(b), Nov. 30, 1993, 107 Stat. 1582; Pub. L. 105-85, div. A, title X, Sec. 1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105-261, div. A, title X, Sec. 1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105-262, title VIII, Sec. 8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106-65, div. A, title III, Sec. 331(a)(1), 332, title X, Sec. 1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106-398, Sec. 1 ((div. A), title III, Sec. 341(f)), Oct. 30, 2000, 114 Stat. 1654, 1654A-64.)

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Historical and Revision Notes 1956 Act Revised section Source (U.S. Code) Source (Statutes at Large) 2208(a) 2208(b) 5:172d(a). July 26, 1947, ch. 2208(c) 2208(d) 5:172d(b). 343, Sec. 405; 5:172d(c) (less 2d added Aug. 10, sentence). 1949, ch. 412, Sec. 5:172d(d).11 (8th through 15th pars.), 63 Stat. 587. 2208(e) 5:172d(e) 2208(f) 5:172d(f). 2208(g) 5:172d(h). 2208(h) 5:172d(g). 2208(i) 5:172d(c) (2d sentence). In subsection (a)(1), (c)(1), (f), (g), and (h), the words "stores, materials, and equipment" are omitted as covered by the word "supplies", as defined in section 101(26) of title 10.

In subsection (c), the word "used" is substituted for the word "consumed". The words "and costs of using equipment" are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: 'prescribe' for "issue"; and "persons" for "purchasers or users". The word "shall" is substituted for the words "is authorized to" in the first sentence and for the word "may" in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 Act Revised section Source (U.S. Code) Source (Statutes at Large) 2208(h) (3d 10:2208 (note). Dec. 21, 1979, Pub. Sentence) L. 96-154, Sec. 767, 93 Stat. 1163. --- The word "hereafter" is omitted as executed.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105-261, Sec. 1008(b).

AMENDMENTS

2000 - Subsec. (j)(1). Pub. L. 106-398 substituted "contract, and the solicitation" for "contract; and" at end of subpar. (A) and all that follows through "(B) the solicitation", substituted"; or" for period after "private firms", and added a new subpar. (B). 1999 - Subsec. (j). Pub. L. 106-65, Sec. 331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted ", remanufacturing, and engineering" for "or remanufacturing" in introductory provisions,

inserted "or a subcontract under a Department of Defense contract" before the semicolon in subpar. (A), substituted "solicitation for the contract or subcontract" for "Department of Defense solicitation for such contract" in subpar. (B), and added par. (2). Subsec. (l)(2)(A). Pub. L. 106-65, Sec. 1066(a)(16), inserted "of" after "during a period". 1998 - Subsec. (l)(3), (4). Pub. L. 105-261, Sec. 1007(e)(1), and Pub. L. 105-262 amended subsec. (l) identically, adding par. (3) and redesignating former par. (3) as (4). Subsecs. (m) to (q). Pub. L. 105-261, Sec. 1008(a), added subsecs. (m) to (q). 1997 - Subsec. (k). Pub. L. 105-85, Sec. 1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: "The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities." Subsec. (l). Pub. L. 105-85, Sec. 1011(b), added subsec. (l). 1993 - Subsec. (i). Pub. L. 103-160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases. 1992 - Subsec. (j). Pub. L. 102-484 substituted "The Secretary of a military department may authorize a working capital funded industrial facility of that department" for "The Secretary of the Army may authorize a working capital funded Army industrial facility". 1991 - Subsecs. (j), (k). Pub. L. 102-172 added subsec. (j) and redesignated former subsec. (j) as (k). 1990 - Subsec. (i)(1). Pub. L. 101-510, Sec. 801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows: "(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if -

"(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

"(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

"(C) the article is not readily available from a commercial source in the United States; and

"(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

"(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser." Subsec. (k). Pub. L. 101-510, Sec. 1301(6), struck out subsec. (k) which read as follows:

"Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section." 1987 - Subsec. (i)(3). Pub. L. 100-26 inserted "(22 U.S.C. 2778)" after "Arms Export Control Act". 1984 - Subsecs. (i) to (k). Pub. L. 98-525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k). 1983 - Subsec. (d). Pub. L. 98-94 substituted "In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law" for "If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose". 1982 - Subsec. (h). Pub. L. 97-295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title X, Sec. 1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105-262, title VIII, Sec. 8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: "Section 2208(l)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) (amending this section) shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984."

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103-337, div. A, title III, Sec. 311(b)-(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104-106, div. A, title III, Sec. 371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277-279. Pub. L. 103-337, div. A, title III, Sec. 311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Section 333(a), (b) of Pub. L. 103-160, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of development, implementation, operation, and

maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section 2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104-106, div. A, title III, Sec. 371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277-279.

CAPITAL ASSET SUBACCOUNT

Section 342 of Pub. L. 102-484, as amended by Pub. L. 103-160, div. A, title III, Sec. 333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset sub account in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the sub account, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104-106, div. A, title III, Sec. 371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277-279.

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102-190, div. A, title III, Sec. 316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102-484, div. A, title III, Sec. 341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103-160, div. A, title III, Sec. 331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103-337 div. A, title III, Sec. 311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in section 2216a(a)-(c) of this title by Pub. L. 104-106, div. A, title III, Sec. 371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

DEFENSE BUSINESS OPERATIONS FUND

Section 8121 of Pub. L. 102-172, which established on the books of the Treasury a fund entitled the "Defense Business Operations Fund" to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a sub account of the Fund, was repealed by Pub. L. 104-106, div. A, title III, Sec. 371(b)(5), Feb. 10, 1996, 110 Stat. 280.

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96-154, title VII, Sec. 767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97-295, Sec. 1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 129, 2210, 2350c, 4543, 4621, 7227, 7300, 7606, 9621 of this title; title 40 sections 549.